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MAILED

AUG 31 2009

OFFICE OF PETITIONS

In re Application of :
Mogensen et al. :
Application No. 10/517,194 : LETTER REGARDING
Filed: December 6, 2004 : PATENT TERM ADJUSTMENT
Attorney Docket No. 12706-7 :
:

This letter is in response to the "Request for Review of Patent Term Adjustment" filed April 24, 2009. Pursuant to applicants' duty of good faith and candor to the Office, applicants request the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the patent term adjustment is **GRANTED**.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is 800 days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On February 6, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated the patent term adjustment to date is 828 days.

Applicants do not state a basis for their disclosure that the Patent Term Adjustment on the Notice of Allowance may be incorrect. However, a review of the record indicates the Office erroneously calculated the patent term adjustment.

The Office mailed a non-final Office action on May 16, 2008. Applicants filed an "Amendment" on August 18, 2008. Applicants filed a "Supplemental Amendment" on September 15, 2008. The Office did not enter a reduction of patent term adjustment for the September 15, 2008 Supplemental Amendment when calculating the patent term adjustment that appeared on the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed with the Notice of Allowance.

Per 37 CFR 1.704(c)(8), circumstances that will result in a reduction in the period of adjustment include:

Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which

case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

Pursuant to 37 CFR 1.704(c)(8), the Office should have entered a reduction of 28 days for the September 15, 2008 Supplemental Amendment when calculating the patent term adjustment mailed with the Notice of Allowance.

In view of the previous discussion, the Office has entered a reduction of 28 days in patent term adjustment for applicant delay due to the filing of the September 15, 2008 Supplemental Amendment.

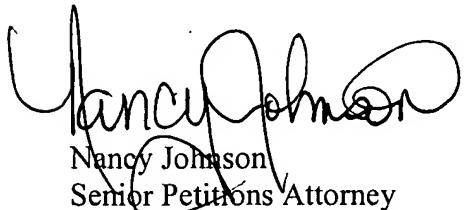
As a result of the 28-day reduction, the patent term adjustment at the time of mailing of the notice of allowance is 800 days which is 830 days of Office delay reduced by 30 days of applicant delay.

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e).

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen

PALM INTRANET

PTA Calculations for Application: 10/517194			
Application Filing Date:	12/06/2004	PTO Delay (PTO):	830
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	2
Post-Issue Petitions:	0	Total PTA (days):	800
PTO Delay Adjustment:	-28		

File Contents History						
Number	Date	Contents Description	PTO	APPL	START	
40	08/28/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		28		
32	02/06/2009	MAIL NOTICE OF ALLOWANCE				
31	02/03/2009	ISSUE REVISION COMPLETED				
30	02/03/2009	DOCUMENT VERIFICATION				
29	02/03/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED				
28	02/02/2009	NOTICE OF ALLOWABILITY				
25	01/23/2009	DATE FORWARDED TO EXAMINER				
24	01/09/2009	AMENDMENT AFTER FINAL REJECTION				
23	11/13/2008	MAIL FINAL REJECTION (PTOL - 326)				
22	11/10/2008	FINAL REJECTION				
21	09/08/2008	DATE FORWARDED TO EXAMINER				
20	08/18/2008	RESPONSE AFTER NON-FINAL ACTION	2	19		
19	05/16/2008	MAIL NON-FINAL REJECTION	830		-1	
18	05/12/2008	NON-FINAL REJECTION				
17	03/24/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED				
16	07/13/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED				
15	04/17/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED				
14	04/17/2006	REFERENCE CAPTURE ON IDS				
13.7	04/17/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED				
13	04/17/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED				
12	03/24/2006	REFERENCE CAPTURE ON IDS				
		INFORMATION DISCLOSURE STATEMENT (IDS)				

11.7	03/24/2006	FILED			
11	03/24/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	08/11/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
9	08/11/2005	CASE DOCKETED TO EXAMINER IN GAU			
8	12/06/2004	PRELIMINARY AMENDMENT			
7	07/13/2005	REFERENCE CAPTURE ON IDS			
6.7	07/13/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	07/13/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5	07/12/2005	CLEARED BY OIPE CSR			
4	12/06/2004	371 COMPLETION DATE			
3	07/06/2005	APPLICATION DISPATCHED FROM OIPE			
2	07/06/2005	NOTICE OF DO/EO ACCEPTANCE MAILED			
1	12/06/2004	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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